

There is no comparable Senate provision.

The Conference substitute adopts a provision to ensure that if the Secretary of Homeland Security requires or recommends security background checks of public transportation employees, adversely affected employees will have an adequate redress process.

Section 1415. Limitation on fines and civil penalties.

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute prohibits the Secretary and the surface transportation security inspectors (STSI) from issuing fines and civil penalties on public transportation agencies except in certain circumstances.

The Secretary and the STSIs should use fines and civil penalties as a last recourse to achieve public transportation agency compliance with DHS security regulations only when other reasonable methods of gaining compliance have not produced adequate results. If a public transportation agency fails to correct a violation or to propose an alternative means of compliance acceptable to the Secretary, then the Secretary may issue fines or civil penalties under section 1302 of the Conference substitute. Additionally, the provision restricts the Secretary or STSIs from issuing fines and civil penalties for violations of administrative and procedural requirements related to the application and use of funds awarded under the transportation security grant programs in this Act. However, the Conference does not consider fraud, gross misuse of grant funds, or any criminal conduct related to the application for or use of grant funds awarded under this Act to be administrative requirements and, therefore, those acts will not be shielded from fines or civil penalties issued by the Secretary.

TITLE XV—SURFACE TRANSPORTATION SECURITY

SUBTITLE A—GENERAL PROVISIONS

Section 1501. Definitions

Section 1001 of the House bill contains several definitions related to transportation security.

Section 1411 of the Senate bill defines the term “high hazard materials.”

The Conference substitute adopts definitions for terms applicable to the title, including a new definition of “security-sensitive materials,” which must be defined by the Secretary of Homeland

Security (the Secretary) through a rule making. The Conference believes that completing the definition of “security-sensitive materials” should be a high priority for the Department of Homeland Security (the Department or DHS), since the definition of this term is a pre-requisite for the implementation of several other provisions within this title.

Section 1502. Oversight and Grant Procedures

There is no comparable House provision.

Section 1426 of the Senate bill authorizes the Secretary of Homeland Security to enter into contracts to audit and review grants awarded under the bill. The Secretary is required to prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures. In awarding grants, the Secretary may issue letters of intent (LOI) to recipients of grants awarded under this bill, as the Secretary may do now for aviation security funding through the Transportation Security Administration (TSA).

The Conference substitute adopts the Senate provision as modified. It requires the Secretary to establish procedures, including those for monitoring and auditing to ensure that grants are expended properly and for application and qualification for grants. The

provision also provides that for grants awarded to Amtrak under this title, the Secretary shall coordinate with the Secretary of the Department of Transportation (DOT) in establishing necessary grant procedures. Additionally, the provision permits either Department to enter into contracts for additional audits and reviews of such grants to Amtrak.

The Conference substitute also permits the Secretary of Homeland Security to issue LOIs to grant recipients. The Conference acknowledges that an LOI is not a commitment of future funds by an agency. The Conference substitute requires that grant recipients return any misspent funds and that the Secretary take all necessary action to return such funds. It also requires the Secretary to notify appropriate Congressional Committees of its intent to award a grant. Finally, the Conference substitute requires that the Secretary ensure, to extent practicable, that grant recipients use disadvantaged business concerns as contractors or subcontractors.

Section 1503. Authorization of Appropriations

There is no comparable House provision.

Section 1437 of the Senate bill authorizes appropriations for the Secretary of Homeland Security for Fiscal Years (FY's) 2008–2010 and for the Secretary of Transportation for FY's 2008–2011 to carry out the activities required by the Act.

The Conference substitute adopts the Senate provision as modified to reflect the authorization levels contained within the sections of this title.

Section 1504. Public Awareness

There is no comparable House provision.

Section 1434 of the Senate bill requires the Secretary of Homeland Security, in consultation with the Secretary of Transportation, within 90 days after the date of enactment of this Act, to develop a national plan for improved public outreach and awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Not later than 9 months after the date of enactment of this Act, the Secretary would be directed to implement this plan.

The Conference substitute adopts the Senate provision with minor modifications, including adding over-the-road bus security matters to the provision.

SUBTITLE B—RAILROAD SECURITY

Section 1511. Railroad Transportation Security Risk Assessment and National Strategy

There is no comparable House provision.

Section 1421 of the Senate bill requires the Secretary of Homeland Security to establish a task force comprised of the Transportation Security Administration (TSA) and others to complete a risk assessment of freight and passenger rail transportation. It also requires the development of recommendations for improving rail security based on the required risk assessment and the establishment of plans to address such recommendations. This section requires the Secretary to report to the appropriate Congressional Committees on the assessment, recommendation, plans and costs to implement such recommendations. In addition, the Secretary is required to include in the recommendations a plan for the Federal government to provide security support at high threat levels of alert; a plan for coordinating existing and planned rail security initiatives undertaken by public and private entities; and a contingency plan developed in conjunction with intercity and commuter passenger railroads to ensure the continued movement of freight and passengers in the event of a terrorist attack. The provision authorizes \$5 million for Fiscal Year 2008 to carry out this section.

The Conference substitute adopts the Senate provision, as modified. The modified provision requires the Secretary to establish a task force to complete a nationwide railroad security risk assessment, including freight, intercity passenger and commuter railroads. The Secretary may make use of the Government Coordinating Council in the establishing of the task force. Based upon this assessment, the Secretary is required to develop a modal plan for railroad security, entitled the “National Strategy for Railroad Transportation Security,” which will serve as the general Federal strategy for improving railroad security.

In completing the assessment and the strategy required by this section, the Conference does not intend for TSA and the Department of Homeland Security to unnecessarily re-do existing assessment and modal plan work, of sufficient quality and relevance, already completed by the agency or other Federal, private or public stakeholders. However, the Conference expects any existing assessments and existing modal plans used to be synthesized into a comprehensive and coherent total assessment and strategy, not simply compiled into a single document. The Conference substitute authorizes \$5 million for FY 2008 to carry out this section.

The Conference notes its frustration with TSA's inability to complete a comprehensive risk assessment and national strategy for the railroad sector. The Conference believes fulfillment of this section to be an absolute priority, so that the results of the assessment may be used to guide the ongoing rail security efforts and the new programs called for in this Conference substitute.

Section 1512. Railroad Carrier Assessments and Plans

There is no comparable House provision.

Section 1421 of the Senate bill requires the Secretary of Homeland Security to establish a task force to complete a risk assessment of freight and passenger rail transportation, develop recommendations for improving rail security based on the risk assessment, and establish plans to address such recommendations.

The Conference substitute adopts a provision addressing railroad carrier risk assessments based upon elements of Senate Section 1421. The provision would require that railroad carriers assigned to a high-risk tier by the Secretary complete a vulnerability assessment and develop security plans to be approved by the Secretary. In addition, the Secretary would be authorized to establish a program to provide guidance and assistance for undertaking assessments and security plans and a process by which such voluntary assessments and plans may be approved by the Secretary for railroad carriers not assigned to a high-risk tier.

Section 1513. Railroad Security Assistance

There is no comparable House provision.

Section 1424 of the Senate bill authorizes the Secretary of Homeland Security, in consultation with the TSA and other entities, to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used to transport hazardous materials, institutions of higher education, State and local governments, and Amtrak, for full or partial reimbursement of costs incurred to prevent or respond to acts of terrorism, sabotage, or other risks. The Secretary would be required to adopt necessary procedures to ensure that grants made under this section are expended in accordance with the purposes of the Act. The Secretary awards and distributes all grants under this provision, except for grants to Amtrak which the Secretary can award, but the Secretary of Transportation would distribute using the